

## Message Text

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ORIGIN L-03

INFO OCT-01 ARA-06 ISO-00 SP-02 AID-05 EB-07 NSC-05

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INT-05 CIAE-00 INR-07 NSAE-00 H-02 SSO-00 NSCE-00

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DRAFTED BY L/ARA:DAGANTZ

APPROVED BY ARA:AFISHLOW

EB:RSMITH

L:SSCHWEBEL

ARA/ECP:JEO'MAHONY

ARA/EP:JFKING

TREASURY:RMUNK/FMARESCA (DRAFT)

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FM SECSTATE WASHDC

TO AMEMBASSY LIMA IMMEDIATE

C O N F I D E N T I A L STATE 190933

E.O. 11652: GDS

TAGS: EINV, EMIN, PFOR, PE, US

SUBJECT: MARCONA EXPROPRIATION - NEW DEMARCHE

REF: A. LIMA 6434 B. LIMA 6413 C. LIMA 6423

D. LIMA 6375 E. LIMA 6499

1. DEPT APPRECIATES AMBASSADOR'S VIEWS (REFS A AND B) REGARDING THE TONE OF GOP STATEMENTS, INCLUDING AUGUST 8 NOTE (REF C), BUT WE REMAIN CONCERNED OVER GOP'S APPARENT INTENT (ESPECIALLY IN LIGHT REF D) TO REQUIRE MARCONA TO EXHAUST A DOMESTIC LEGAL PROCESS WHICH AT BEST OFFERS BUT A SLIM CHANCE OF PRODUCING AN ACCEPTABLE RESULT. IN THIS RESPECT, DEPT NOTES THAT IN PERUVIAN NOTE (REF C) GOP  
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AGAIN REFERS TO THE RIGHT OF MARCONA TO RESORT TO PERUVIAN COURTS AND INDICATES THAT NEGOTIATIONS ("DIALOGUE") WOULD SIMPLY BE AN APPROPRIATE MEANS OF "CLARIFYING" THE ISSUES. WE DO NOT WISH GOP TO GET THE IMPRESSION THAT SUBMISSION OF

THE MATTER TO LOCAL LAW AND LOCAL COURTS WILL IN ITSELF DISCHARGE GOP OBLIGATIONS TO MARCONA UNDER INTERNATIONAL LAW, ESPECIALLY WHEN CERTAIN ASPECTS OF GOP LEGAL PROCESS - SUCH AS PROVISION OF DECREE 21221 THAT PROVIDES CRIMINAL PENALTIES FOR OUTSIDE EXPERTS VALUING PROPERTY AT MORE THAN 50 ABOVE VALUE ASSESSED BY JUDGE - MAKE IT HIGHLY PROBABLE

THAT END RESULT WILL CONSTITUTE A DENIAL OF JUSTICE. WE ARE ALSO CONCERNED THAT LEGAL PROCESS COULD PROVIDE A VEHICLE FOR DELAYING A SETTLEMENT, OR EVEN CLARIFICATION OF GOP INTENT TO COMPENSATE ADEQUATELY OR NOT COMPENSATE MARCONA, WHILE MAKING IT VERY DIFFICULT FOR USG TO DEAL WITH VARIOUS REQUIREMENTS OF US LEGISLATION. WHILE PROCESS SUGGESTED BY GOP COMMUNIQUE (REF D) FOR FIXING PRICE OF ASSETS APPEARS RELATIVELY PROMPT, MARCONA CHALLENGE OF COUNTERCLAIMS OR SETOFFS COULD DRAG ON INDEFINITELY. (SEE SUBPARA 10, PARA 1, REF D.) AT THE SAME TIME, WE WOULD NOT REPEAT NOT WISH TO TAKE ANY ACTION THAT WOULD MAKE IT MORE DIFFICULT FOR MARCONA TO TAKE DEPLETION ALLOWANCE OR OTHER DISPUTED ISSUES TO COURT SHOULD IT CHOOSE TO DO SO. (REF E.)

2. WE DO NOT BELIEVE IT DESIRABLE PRIOR TO AUGUST 14 MEETING TO GET INTO A DETAILED DISCUSSION WITH GOP OFFICIALS ON MERITS OF THEIR LEGISLATION. ON THE OTHER HAND, WE THINK IT WOULD BE ADVISABLE PRIOR TO THE RESUMPTION OF TALKS BETWEEN GOP AND MARCONA FOR AMBASSADOR TO MAKE IT CLEAR TO GOP - PREFERABLY TO PRIME MINISTER MORALES-BERMUDEZ - OUR HOPE THAT THIS MEETING AND SUBSEQUENT ONES WILL BE UTILIZED BY GOP FOR PURPOSE OF ENGAGING IN SUBSTANTIVE NEGOTIATIONS WITH MARCONA, ON ALL RELEVANT ISSUES, AIMED AT A PROMPT, COMPREHENSIVE SETTLEMENT, RATHER THAN SIMPLY FOR INFORMING MARCONA THAT A SETTLEMENT CAN BE PURSUED ONLY THROUGH THE VARIOUS LEGAL MECHANISMS THAT THE GOP HAS BEEN SETTING UP DURING THE PAST FEW WEEKS. UNTIL RECENTLY, GOP AND MARCONA HAD IN FACT BEEN NEGOTIATING, AND IT SEEMS TO US THAT THERE IS NO CONFIDENTIAL

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INHERENT REASON, DESPITE EVENTS OF PAST FEW WEEKS, THAT WOULD PREVENT THOSE DISCUSSIONS FROM CONTINUING.

3. IF IT BECOMES APPARENT FROM YOUR DISCUSSIONS WITH GOP AS RECOMMENDED PARA 2 ABOVE AND FROM FIRST SESSIONS MARCONA-GOP DISCUSSIONS THAT GOP DOES IN FACT INTEND TO USE ITS LEGAL PROCESS AS A MECHANISM FOR STRINGING OUT AND ULTIMATELY FRUSTRATING, A MUTUALLY SATISFACTORY SETTLEMENT, WE WILL HAVE TO CONSIDER A FURTHER, MORE SPECIFIC DEMARCHE. KISSINGER

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